CF0000060796

(2)

Cr A 2139/96

X-188 (Jail)
C.P.R. – 5 (III)-9-87

APPEAL OF PRISONER

No. 1076 Name भागवत राम Division Bench (Criminal)

Father's name रूपराम Age 32 वर्ष

Caste व्यवसाय कुसमी

Sentenced to आजीवन कारावास एवं 750/- प्रथम श्रेणी न्यायालय अम्बिकापुर

Under section 302, 436 I.P.C. by

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received 15/10/96

3 Date on which Appeal sent

4 Whether the prisoner wishes to be represented or not – Yes/No.

No. 1076 Name भागवत राम

Confined in अम्बिकापुर Jail

No. 2551 dated 16.10.96 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

जज 45 निर्णयप्रति

Superintendent Central/ Distt./ Sub-Jail
अधीक्षक
जिला जेल अम्बिकापुर (सरगुजा)

Date of receipt in C. J. M.'S Office 16/10/96

Date of receipt of record to accompany 21/11/96

Memo of Appeal of the Appeliate Court. माननीय उच्च न्यायालय बिलासपुर

No. 9 Dated 21/11/96 198

Forwarded to the माननीय उच्च न्यायालय बिलासपुर

C.J.Magistrate
मुख्य न्यायिक मजिस्ट्रेट
अम्बिकापुर, जिला सरगुजा (म.प्र.)

Date of receipt in Appliate Court

(P.T.O.)

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 2139/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 2139 of 1996

Appellants : Bhagwat Ram

Vs.

Respondent : State of Madhya Pradesh

Shri Abhay Tiwari, learned counsel for the appellant.

Shri U.N.S.Deo, learned Govt. Advocate for the State/respondent.

-ORAL JUDGMENT
(02.03.2006)

L.C.Bhadoo, J

By this appeal under Section 374 (2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 15.10.96 passed by learned First Additional Sessions Judge, Ambikapur in S.T. No. 118/92 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of murder of one Suili Bai convicted him under Sections 302 and 436 of the IPC and sentenced him to undergo imprisonment for life and rigorous imprisonment for seven years respectively.

2. Case of the prosecution, in brief, is that deceased Suili Bai, wife of P.W.-3 Mogal was residing in a thatched hut and she was having goats. Her sons were residing separately. In the intervening night of 15th and 16th of

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मामला क्रमांक Cr.A.No. 2137/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

January 1992, the hut of Suili Bai was set on fire upon which Suili Bai raised screams and called his sons and their wives. Her sons, wives namely Patni Bai, Nanheri Bai and Muniya Bai (P.W.-7) came and tried to extinguish the fire but they could not extinguish the fire. At that time accused came with the *Balua* and started threatening them whereupon the daughter in laws of Suili Bai ran towards the forest along with their children. The accused/appellant committed theft of three goats and when Suili Bai tried to stop him he assaulted her (Suili Bai) with the *Balua* and thereafter he sold the goats in consideration of Rs. 500/- to one Fakhruddin Ansari. The First Information Report Ex.P-6 was lodged by P.W.-2 Sogal. P.W.-9 Surendra Giri after registering the crime under Sections 436 and 302 of the IPC reached to the place of occurrence after giving notice P-1 to the panchas and prepared Panchnama P-2 of the body of Suili Bai. Blood stained and plain soil was taken into possession under P-3 from the place of occurrence. The burnt articles of Suili Bai were taken into possession from her house under P-4 and P-5. On the memorandum of the accused/appellant Ex. P-8, three goats were recovered under P-19. The iron *Farsa* and blood stained clothes were taken into possession under P-10. The body of Suili Bai was sent for post mortem examination and Dr. T. Sai P.W.-8 conducted the post mortem and submitted the post mortem report P-16 in which he opined that on account of head injury and coma Suli Bai died and death was homicidal. After completion of the investigation charge sheet was filed in the Court of Juducial Magistrate First Class, Ambikapur who in turn committed the case to the Sessions Judge from where the learned Additional Sessions Judge received the case on transfer for trial.

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3. The prosecution in order to establish the crime against the accused/appellant examined nine witnesses. State of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he has been falsely implicated in the crime and the witnesses are liars and he is innocent.

4. After hearing the arguments of Additional Public Prosecutor and counsel for the accused/appellant, learned Additional Sessions Judge convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

5. We have heard Shri Abhay Tiwari counsel for the accused/appellant and Shri U.N.S.Deo, learned G.A. for the State.

6. Homicidal death of Suili Bai is not in dispute.

7. As far as the involvement of the accused/appellant in committing the murder of Suili Bai and setting the hut of Suili Bai on fire is concerned, learned counsel for the accused/appellant argued that there is no legal clinching evidence to connect the accused with the crime in question. P.W.-7 Muniya Bai has been examined by the prosecution as an eye witness and she has stated that the hut was at about 100 yards away from their house and on hearing the screams of her mother in law she along with her two sisters/ in laws (*Jethani*) reached on the spot and saw that the hut was burning and accused/appellant holding the *Balua* in his hand was brandishing and said that "if you want to save your life, run away" on

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which they went towards the forest. The accused/appellant assaulted her mother in law with the *Balua* on her head, temporal region and hand as a result of which her mother in law died. The incident was witnessed by herself and two of her sister in laws as they were frightened they did not try to rescue their mother in law. But her two sister in laws have not been examined by the prosecution. In the cross examination, this witness has stated that it is incorrect to say that she had not witnessed the accused setting the hut on fire. At the time of giving statement to the Investigating Officer she has stated that she witnessed accused/appellant Bhagwat setting the hut on fire but she does not know if this part of the statement is not mentioned in her police diary statement D-2. She also disclosed to the Investigating Officer at the time of giving statement that accused Bhagwat has murdered her mother in law and if the same does not find place in her police diary statement she cannot assign any reason. She also disclosed to the Investigating Officer that the accused was brandishing the *Balua* after seeing them and if the same does not find place in her police diary statement D-2 she cannot assign any reason and in further cross-examination she has stated that it is correct to say that she along with her sister in laws were sleeping in their house and her mother in law was also sleeping in her house. The witnessing of setting the hut on fire by the accused/appellant and assaulting her mother in law Suili Bai by accused Bhagwat has not been mentioned in the police diary statement recorded under 161 of the Cr.P.C. Thus, in the evidence of this witness before this Court, there is improvement and therefore same cannot be believed and relied upon. Moreover, the First Information Report (P-6) was lodged by none else than the brother of Mogal namely Sogal and in that also it is not mentioned that the accused assaulted Suili Bai or has set the hut of Suili

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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Bai on fire. Even the question of committing theft of goats by this accused has not been mentioned in the First Information Report (P-6).

8. P.W.-2 Sogal has stated that he lodged the FIR (P-6) when he received the news from one Laabu regarding the death of Suili Bai. He went to the village of Suili Bai and saw that her hut was burnt and one lady was lying dead and her head was covered with blood stained cloth. The villagers did not know how she died and they asked him to go and report and thereafter he lodged the report P-6 in the police station. Deceased Suili Bai was residing separately from her sons and their wives and children. He enquired from the wife of Khuira that anybody came to the house of Suili Bai then she disclosed that Bhagwat came holding *Farsa* in his hand but he has not witnessed who murdered Suili Bai and how the hut was set on fire. At the time of lodging the report he mentioned that wife of Khuira disclosed him that Bhagwat came holding *Farsa* in his hand and if the same has not been mentioned in the First Information Report (P-6) he cannot assign any reason. Therefore from the evidence of P.W.-2 Sogal and P.W.-7 Muniya Bai it is not established that the accused was the person who set the hut on fire and he assaulted Suili Bai and the evidence of witnessing the crime by P.W.-7 Muniya Bai and the evidence of Sogal P.W.-2 that he received the information from the wife of Khuira, does not inspire confidence because whatever they have stated in the Court has not been mentioned in their FIR (P-6) and in the police diary statement D-2.

9. P.W.-1 Batai has stated that Suili Bai was residing at about one mile away from the village and her daughter in laws were also residing separately.

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Suili Bai was residing all alone in the hut. The body of Suili Bai was seen in the morning. The daughter in law of Suili Bai has stated that she saw the body of Suili Bai and nothing else was seen by her. Mogal, husband of the deceased was not at the residence on the fateful night and in the cross-examination he has stated that who set the hut of Suili Bai on fire and who murdered his wife was not witnessed by him. P.W.-4 Janak Dev before whom the identification of the goat, *Farsa* and the accused was said to have been conducted, has stated that P-12 identification memo bears his signature. P.13 and P-14 also bears his signature and stated that nothing was seized before him and further stated that no identification proceedings were conducted before him. The goat and *Farsa* were not identified before him. This witness has been declared hostile. The evidence of P.W.-5 Bahadur Ram is, to the effect that the identification memo of P-12, P-13 & P-14 bears his signature but he has not stated that he identified the goat, accused and the *Farsa*. Further in the cross examination, he stated that all the seizures were made in the police station. Similar is the evidence of P.W.-6 Parmeshwar who has stated that identification memo P-12,P-13 and P-14 bears his signature but in the cross examination he has stated that he does not remember that who identified the goat, accused and the *Farsa* and has stated that the memos were written by the *Daroga* and not by him. The *Daroga* asked him to sign the papers therefore he signed.

10. Thus, there is no evidence to connect the accused with the crime in question and the judgment of conviction and order of sentence passed by the learned trial Court cannot be sustained for the foregoing reasons. It is

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unfortunate that such a brutal murder and setting the hut on fire remains unpunished on account of poor investigation.

11. In the result, the appeal succeeds and the same is allowed. The conviction and sentence imposed on the accused/appellant under Sections 302 & 436 of the IPC are set aside and he be set on liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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5/4/06